

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLIE DAVID JACKSON,)	No. C 12-2516 CRB (PR)
)	
Plaintiff,)	ORDER DENYING MOTION
)	TO REINSTATE DR. FRIEHA
vs.)	AS A DEFENDANT AND TO
)	ADD CORRECTIONAL
KEVIN R. CHAPPELL, Warden, et al.,)	COUNSELOR CURZON AS A
)	DEFENDANT
Defendants.)	
)	(Dkt. #124 & 128)

Plaintiff, a former prisoner at San Quentin State Prison (SQSP), filed a pro se Third Amended Complaint (TAC) for damages under 42 U.S.C. § 1983 alleging denial of mental health treatment at SQSP against Warden Kevin R. Chappell and doctors R. Fong, Frieiha (or Freiha), E. Sprick and Burton. Plaintiff specifically alleges that at various times in 2010, doctors R. Fong, Frieiha (or Freiha), E. Sprick and Burton denied him treatment for his mental illnesses (including depression and anxiety) despite his asking them for treatment.

Per order filed on January 30, 2014, the court found that, liberally construed, plaintiff's allegations appear to state a cognizable § 1983 claim for deliberate indifference to serious medical needs against doctors R. Fong, Frieiha (or Freiha), E. Sprick and Burton, but dismissed Warden Kevin R. Chappell because plaintiff set forth no allegations against Chappell and it is well established that there is no liability under § 1983 solely because one is responsible for the actions or omissions of another. Dkt. #106 at 1-2.

1 The court made clear that plaintiff's deliberate indifference to serious
2 medical needs claim may proceed against doctors R. Fong (who was previously
3 served), Frieiha (or Freiha), E. Sprick and Burton. But the court warned plaintiff
4 that it will not order service of summons and of the TAC on the three unserved
5 defendants – doctors Frieiha (or Freiha), E. Sprick and Burton – unless plaintiff
6 “provides a recent address for each of these defendants within 30 days of this
7 order. Failure to do so will result in the dismissal of the unserved defendants and
8 a scheduling order will be issued as to defendant R. Fong only.” Id. at 2.

9 Per order filed on April 4, 2014, the court dismissed without prejudice
10 unserved defendants doctors Frieiha (or Freiha), E. Sprick and Burton because
11 “[m]ore than 60 days ha[d] elapsed and plaintiff still ha[d] not provided a recent
12 address for any of the three unserved defendants.” Dkt. #107 at 2. The court
13 noted that the case “will proceed as to defendant doctor R. Fong only” and
14 ordered Dr. Fong to serve and file a dispositive motion within 60 days. Id.

15 Plaintiff then moved to reinstate Dr. Burton as a defendant on the ground
16 that the court improperly dismissed him before attempting to serve him at SQSP.
17 Per order filed on June 2, 2013, the court found plaintiff's argument “unavailing
18 because plaintiff did not inform the court in the TAC or elsewhere (despite being
19 advised to do so) of a service address for Dr. Burton or either of the two other
20 unserved defendants.” Dkt. #119 at 2. But because Dr. Burton was dismissed
21 without prejudice and plaintiff now submitted that Dr. Burton “is at SQSP,” dkt.
22 #112 at 2, the court granted the motion to reinstate Dr. Burton as a defendant “in
23 the interest of justice and judicial economy” and ordered the United States
24 Marshal to serve Dr. Burton at SQSP. Id.

25 Apparently emboldened by the court's granting of his motion to reinstate
26 Dr. Burton as a defendant, plaintiff now has filed a motion to reinstate Dr. Frieiha
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1 (or Frieha) as a defendant and to add Correctional Counselor Curzon as a
2 defendant. The motion (dkt. #128) is DENIED as to both Frieha and Curzon.
3 Plaintiff provides no indication of where Dr. Frieha may be served, much less an
4 excuse for his delay in seeking to reinstate her. Nor does plaintiff provide any
5 excuse for his waiting until now to move to add as a defendant a correctional
6 officer/counsel he "mentioned" but did not name as a defendant in the TAC.
7 Moreover, plaintiff's allegation in the TAC that Curzon denied plaintiff's request
8 to be placed in administrative segregation for mental health reasons after plaintiff
9 met with Dr. Burton and Curzon and Dr. Burton denied the same request cannot
10 be said to amount to a § 1983 claim for deliberate indifference to serious medical
11 needs against Curzon. Cf. Peralta v. Dillard, 744 F.3d 1076, 1086-87 (9th Cir.
12 2014) (en banc) (prison medical officer without expertise in specific field who
13 denies an inmate appeal for medical care after it was reviewed by two qualified
14 medical officials does not demonstrate a wanton infliction of unnecessary pain).

15 Plaintiff's motion (dkt. #124) for production of transcripts and copies of
16 all documents in the docket in this matter in order to litigate his recently filed
17 appeal is DENIED. The Ninth Circuit more recently dismissed plaintiff's appeal
18 for lack of jurisdiction. See Dkt. #123.

19 The clerk is instructed to terminate the motions filed as docket items
20 numbers 124 and 128.

21 SO ORDERED.

22 DATED: June 30, 2014

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25 CHARLES R. BREYER
26 United States District Judge
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